



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 203486

PRELIMINARY RECITALS

Pursuant to a petition filed on October 18, 2021, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Human Services Department regarding FoodShare benefits (FS), a hearing was held on December 15, 2021, by telephone. The hearing was first scheduled for November 10, 2021 but rescheduled at the request of Petitioner who advised the administrative law judge that she would like additional time to try to reach informal resolution with the agency. A related appeal concerning a BadgerCare Plus overpayment (DHA Case No. MOP-203487) was heard at the same time. A separate decision will be issued regarding that matter.

The issue for determination is whether Petitioner was overpaid \$1,458 in FoodShare benefits for the time period July 2018 through September 2018 as a result of failing to report an increase in household income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Rock County Human Services
1900 Center Avenue
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County who received FoodShare as the primary person of a four-member FoodShare household from December 2017 through September 2018.
2. On January 2, 2018, Petitioner completed a FS interview with the agency by telephone. She reported that she and her spouse were self-employed and had no other income. She subsequently submitted requested verification of the household's self-employment income. Based on that verification, the agency determined that the household had \$1,927.91 in gross income as of December 2017.
3. On January 9, 2018, the agency mailed Petitioner an "About Your Benefits" notice which stated, that she, her spouse, and two children were eligible for \$37 in FS benefits for December 2017 and \$388 per month as of January 1, 2018. The notice instructed Petitioner, in relevant part, "If your household's total monthly income (before taxes) goes over \$2,050 [100% FPL for a four-person household], you must report it by the 10th day of the next month."
4. On April 30, 2018, Petitioner reported a change in self-employment income and on May 7, 2018 provided Self Employment Income Report Forms to verify the household's January through May 2018 self-employment income. Based on that information, the agency determined that the household's gross income had decreased to \$1,521 as of June 2018.
5. On May 14, 2018, the agency mailed Petitioner an "About Your Benefits" notice which indicated that her household's FS benefit would increase to \$486 as of June 1, 2018. The notice instructed Petitioner, in relevant part, "If your household's total monthly income (before taxes) goes over \$2,665 [130% FPL for a four-member household], you must report it by the 10th day of the next month."
6. Petitioner began a full-time job with [REDACTED] on May 7, 2018 and remained employed there through January 27, 2019. Petitioner's monthly gross earnings from [REDACTED] were \$2,400 in May 2018; \$2,345 in June 2018; \$2,105 in July 2018; \$3700 in August 2018; and \$3,360 in September 2018.
7. Petitioner's total household income exceeded \$2,665 from May 2018 through September 2018.
8. On or about November 15, 2018, the agency received a SWICA wage match discrepancy indicating that Petitioner had received unreported wages from [REDACTED] in the second quarter of 2018 and determined that she began that job on May 7, 2018.
9. In February 2019, the agency requested and received documentation of Petitioner's monthly income from [REDACTED] for the time period May 2018 through January 2019 as part of an overpayment investigation of which Petitioner was advised, found that Petitioner had not timely reported that income after beginning her job in May 2018, and concluded that she had, as a result of that failure, been overpaid FoodShare benefits from May 2018 through September 2018.
10. On October 6, 2021, the agency sent Petitioner a FoodShare Overpayment Notice and worksheets informing her of its determination that she had been overpaid \$1,458 due to client error and that she was liable to repay that sum.
11. Petitioner filed a timely appeal.

DISCUSSION

The federal regulations that govern the FoodShare ("FS") program require the department to take action to establish a claim against any household that received an overpayment of FS regardless of whether that

overpayment occurred as a result of an inadvertent household error (also known as a “client error”) or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b); FoodShare Wisconsin Handbook, (FS Handbook) § 7.3.2. Overpayments due to “agency error” may be recovered if they were issued during the twelve months prior to the date the agency discovered the overpayment. FS Handbook, § 7.3.2.1. Overpayments due to “client error” may be recovered if they were issued during the six years prior to the date the agency discovered the overpayment. Id.

FoodShare households are typically required to report to the agency when total monthly gross income increases to an amount that exceeds 130% of the Federal Poverty Level. Such a change must be reported by the 10th of the month following the month in which increase occurs. FS Handbook § 6.1.1.2. The agency here contended that Petitioner’s income exceeded that reporting threshold in May 2018, that she was required to report the increase by June 10, 2018, and that had she done so, her household would not have been eligible for FS from July 2018 through September 2018.

In a fair hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. To meet its burden, a preponderance of the evidence in the record must support the agency’s action. This means that the evidence must show that it is more likely than not that the agency’s overpayment finding was proper. Generally speaking, to successfully establish an overpayment claim, the agency needs to present: a copy of a notice and overpayment computations that were sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused the issuance of FoodShare benefits for which the client was not otherwise eligible; documentation of the benefits actually paid; Case Comments corroborating the facts and timeline of the original reporting; subsequent discovery; client contacts, etc. See, generally, 7 CFR §273.15 and §273.18; FS Handbook §7.3.1.8.

The agency offered CARES case comments showing that there is no notation of a contact from Petitioner at any time prior to October 2018 regarding her employment with [REDACTED]. The agency’s position is that income consortium workers are instructed to enter case notes to document all contacts received from benefit recipients regarding income increases and that the absence of such a case note demonstrates that Petitioner did not call the agency. The absence of a case note is relevant evidence in this type of overpayment case but such evidence may be effectively rebutted by a petitioner who is able to offer detailed, credible testimony or otherwise persuasive evidence demonstrating that they did, in fact, timely report an increase in income to the agency.

Petitioner, who did not dispute either that her household income increased above 130% FPL starting in May 2018 nor that she received benefits to which she was not eligible, testified that “[the agency’s conclusion that she failed to report that] did not sit well with her” for a number of reasons. In other words, she contended that the overpayment was not due to client error and that she should therefore not have to repay it. Petitioner testified that she knows she reported to the agency after she began working for [REDACTED] on May 7, 2018 because, at that time, she realized her \$20 per hour wage would result in her becoming ineligible for benefits. Petitioner did not offer any documents to corroborate her assertion that she contacted the agency regarding her new employment by June 10, 2018 or any detail regarding the manner of contact. I also note that Petitioner’s household FS allotment actually increased in June 2018 and there is no evidence in the record indicating that Petitioner contacted the agency to find out why that had occurred despite her stated belief that her benefits would be ending following her new employment.

Petitioner argued that the agency’s delay in establishing the overpayment claim made it difficult to remember events clearly and made it difficult to gather relevant documentation. Her frustration with the delay in the establishment of the overpayment claim is understandable and her contention that such a delay may adversely affect a beneficiary’s ability to effectively defend against an overpayment claim is not without merit. However, the policy effective on the date that the overpayment claim in this case was

established allowed for the recovery of FS benefits as far back as six years prior to the date of discovery that the overpayment occurred if the overpayment was due to client error and one year prior to the date of discovery if the overpayment was due to agency error. See FS Handbook Release 21-04, §7.3.2. The latest date one could argue the discovery occurred here is the date of the overpayment determination notice (i.e., October 6, 2021).

For the reasons set forth above and based on a totality of the evidence in the record, I find it is more likely than not that Petitioner was overpaid FS benefits due to her failure to timely report new employment with [REDACTED]. Thus even using the date of discovery that would be most beneficial to Petitioner, the entirety of the overpayment period falls within the six year lookback period and is recoverable.

CONCLUSIONS OF LAW

The agency correctly determined that Petitioner was overpaid \$1,458 in FoodShare benefits for the time period July 2018 through September 2018 as a result of failing to report an increase in household income.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

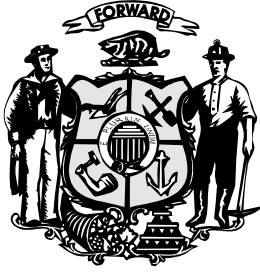
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 14th day of January, 2022

\s 

Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 14, 2022.

Rock Cty Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability